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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,476	01/06/2004	Takahiro Nishi	2003_1879	3543
513	7590	11/03/2004	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P.			BOCCIO, VINCENT F	
2033 K STREET N. W.			ART UNIT	
SUITE 800			PAPER NUMBER	
WASHINGTON, DC 20006-1021			2616	

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/751,476	Applicant(s) NISHI ET AL.	
	Examiner Vincent F. Boccio	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Pre-Amendment A 1/6/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/176,953.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/6/04 & 2/4/04</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 2616.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 11 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,654,541. Although the conflicting claims are not identical, they are not patentably distinct from each other because {see below}.

Claim 11 {encoding method}, of this application 10/751,476, recites all the elements of the recited data structure as recited in Patented claim 1 {a data structure claim}

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but, application claim 11, as recited is the encoding method which is the method for generating the data structure as claimed in claim 1.

Therefore, the data structure claim fails to recite the elements of encoding such as:

{A} Encoding to generate the data structure;
{B} multiplexing the display cycle-ID in the bit stream, in each header of the video sequence including a plurality of video frames.

The examiner takes official notice that the method of encoding thereby performing multiplexing, to create the interleaved data structure, is an obvious method of encoding to create the data structure of claim 1 of the patent.

Therefore, it would have been obvious to those skilled in the art at the time of the invention that in the process of creating an interleaved data structure as recited, is obvious that the data structure can be created by an encoding method including multiplexing to create the recited data structure, therefore, obvious to recite or to perform multiplexing to create the data structure, therefore, the claims data structure claim 1, is determined to be obvious over the method of encoding including multiplexing to create the recited data structure as claimed in claim 11.

Furthermore, since Terminals Disclaimers have already been filed between these related Patents {below} and wherein in this action there exists no prior art rejection,

- {1} US 6,671,456, Nishi et al., {Patent Dated, 03/16/04};
- {2} US 6,671,456, Nishi et al., {Patent Dated, 12/30/03};
- {3} US 6,654,541, Nishi et al., {Patent Dated, 11/25/03};
- {4} US 6,654,545, Nishi et al., {Patent Dated, 11/25/03}; and
- {5} US 6,549,724, Nishi et al., {Patent Dated, 04/15/03};

and due to the claims already being established as obvious variation in claim language in view of the terminal disclaimers already filed by applicant,

o upon the determination that a T.D. will be filed based on the Obvious Double Patenting as stated above, terminally disclaiming against all patents identified by the examiner, is also required.

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Allowance of claim 11, of the instant application would result in a time-wise extension of the monopoly previously granted for the invention defined by patent claims for all the patented claims identified, therefore, obviousness type double patenting is deemed proper.

Contact Fax Information

Any response to this action should be mailed to:
Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for formal communication intended for entry)

or:

(703) 308-5359, (for informal or draft communications, please label "PROPOSED" or "DRAFT")


Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Contact Information

Any inquiry concerning this communication or earlier communications should be directed to the examiner of record, Monday-Thursday, 8:00 AM to 5:00 PM Vincent F. Boccio (703) 306-3022.

Any inquiry of a general nature or relating to the status of this application should be directed to Customer Service (703) 306-0377.

Primary Examiner, Boccio, Vincent
10/31/04


VINCENT BOCCIO
PRIMARY EXAMINER